

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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TERRY NELSON AND GARY LARSON,  
as Trustees of the Painters and Allied  
Trades District Council No. 82 Health Care  
Fund and the Painters and Allied Trades  
District Council No. 82 Vacation Fund;  
TERRY NELSON AND WILLIAM GRIMM,  
as Trustees of the Minneapolis Local 386  
Drywall Finishing Industry Pension Fund;  
TERRY NELSON AND GARY LARSON,  
as Trustees of the Minneapolis Painting  
Industry Pension Fund; TERRY NELSON  
AND ROBERT SWANSON, as Trustees of  
the Minnesota Finishing Trades Training  
Fund; and each of their successors,

Case No. 09-CV-02406 (PJS/SER)

TERRY NELSON AND JOHN  
NAKASONE, as Trustees of the St. Paul  
Painting Industry Pension Fund; and each  
of their successors

**SECOND SUPPLEMENTAL  
AFFIDAVIT OF  
JOEL NASSTROM**

Plaintiffs,

vs.

Spectrum Custom Designs, Inc., and  
Jorge Restrepo, individually,

Defendants

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STATE OF MINNESOTA )  
                        )ss  
COUNTY OF HENNEPIN )

**JOEL NASSTROM**, being first duly sworn upon oath deposes and says:

This Affidavit is made to supplement my previous Affidavits in the above-entitled  
matter dated January 19, 2010 and filed with the Court as Docket No. 11 and dated  
March 16, 2010 and filed with the Court as Docket No. 23.

I have personal knowledge of the facts set forth herein.

In late 2010, in lieu of submitting their monthly remittance reports for the period of June 1, 2009 through December 31, 2009, Spectrum Custom Designs and Restrepo submitted their payroll and employment records. I reviewed the information and determined that there were hours worked by Spectrum Custom Designs and Restrepo's employees during this period covered by the 2008 Collective Bargaining Agreement for which contributions were not submitted to the Trustees. I created an audit invoice setting forth these contributions. A true and correct copy of my audit invoice is attached hereto as Exhibit G.

1. Included in the documents produced by Spectrum Custom Designs and Restrepo was a 1099 form issued for 2009 by Spectrum Custom Designs to CR Quality Painter LLC in the amount of \$9,103.00. A true and correct copy of the 1099 form is attached hereto as Exhibit H.

2. The 2008 Collective Bargaining Agreement prohibits signatory employers from subcontracting any covered work unless the subcontractor is also signatory to the 2008 Collective Bargaining Agreement or other collective bargaining agreement with a Union affiliated with the Union of Painters and Allied Trades. The 2008 Collective Bargaining Agreement further provides that if an employer violates this provision, the employer is subject to monetary damages in an amount representing the difference between the wages and fringe benefits provided in this 2008 Collective Bargaining Agreement and those actually paid by the subcontractor.

3. CR Quality Painter LLC is not signatory to any collective bargaining agreement requiring contributions to any of the Plaintiff employee benefit plans.

Accordingly, I divided the amount of the 1099 form by the applicable journeyman wage rate to determine the number of hours worked. I then multiplied the number of hours by the applicable hourly fringe benefit contribution rate to calculate the amount for fringe benefit contributions due and owing as a result of Spectrum Custom Design's and Restrepo's breach of the 2008 Collective Bargaining Agreement's subcontracting clause.

As set forth on my audit invoice, currently, \$32,762.02 is due and owing to the Trustees for delinquent contributions for the period of June 1, 2009 through December 31, 2009.

Liquidated damages for the period of June 1, 2009 through December 31, 2009 total \$3,276.20.

As set forth in my previous Affidavits, the Trustees still have not received any payments for hours set forth on my audit invoice relating to the Heritage Middle School project from the Defendants or any other entity.

This Affidavit is made in support of Plaintiffs' Motion for Summary Judgment and Entry of Default Judgment.

FURTHER YOUR AFFIANT SAITH NOT.

Subscribed and sworn to before me  
this 8 day of April 2011

  
Notary Public

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